WILLKIE FARR & GALLAGHER

Washington, DC
New York
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June 15, 1990

FEDERAL EXPRESS

Mr. Steven Siegel
Office of Regional Counsel
United States Environmental Protection Agency
2305 Dearborn Street
Chicago, Illinois 60604

Re: NL/Taracorp Superfund Site,
Granite City, Illinois

Dear Steve:

On behalf of NL Industries, I would like formally to request that NL and other potentially responsible parties be permitted to conduct, through a qualified and EPA-approved health science consultant, the blood lead study of residents in the vicinity of the NL/Taracorp site proposed in the Record of Decision for the site issued March 30, 1990.

As you know, § 122 of CERCLA, 42 U.S.C. § 9622, provides that EPA may enter into agreements with potentially responsible parties to perform a remedial action. This section also provides that "whenever practicable and in the public interest... the president shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation." If the Agency decides not to use the procedures specified in § 122 to implement a response action it "shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate." 42 U.S.C. § 9622(a).

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We see no basis for excluding the blood lead study component of the remedy from the § 122 negotiation and settlement procedures specified in CERCLA. As the Agency's Interim Guidance on Notice Letters, Negotiations, and Information Exchange (Nov. 25, 1987) makes clear: "SARA emphasizes the importance of entering into negotiations and reaching settlements with potentially responsible parties to allow PRPs to conduct or finance response actions." 53 Fed. Reg. 5298, Feb. 23, 1988. Prior to the conduct of the remedial design/remedial action the Agency "should either issue the special notice to PRPs or provide PRPs with an explanation why it was not appropriate to use the special notice procedures." 53 Fed. Reg. 5302. EPA has done neither in this case.

The blood lead study is an integral part of the remedy selected in the Record of Decision for the NL/Taracorp site. We would like the opportunity to perform this portion of the remedy, as required by CERCLA, particularly if EPA intends to seek recovery of the costs of the study from the potentially responsible parties. If EPA refuses to comply with this request, we would like, at a minimum, to have the ability to review and comment on the protocol for the study, observe the sampling, obtain the results and undertake concurrent house dust, tap water, soil and air sampling of the residences being sampled.

Please call Steven Tasher or me to discuss this matter at your earliest opportunity.

Sincerely,

Bonni Fine Kaufman/llb

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